

### **REMARKS**

This application has been abandoned. However, on January 21, 2009, Applicant filed a Petition to the Director Under 37 C.F. R. 1.181(a) Requesting Withdrawal of the Holding of Abandonment. In order to expedite prosecution upon such Withdrawal, Applicant respectfully request entry of this paper. Upon entry, claims 1-15, 26-29, 31-40 are pending in this application. Claims 1-15, and 27-29 have been withdrawn. Claims 16-25, and 30 have been cancelled. Claims 31-40 are new. Claims 1, 8, 11, 13, 26, and 27 are independent claims.

**Applicant affirms and hereby elects to prosecute the invention of Group IX (Claims 26, 31-40), with traverse with respect to Groups I-IV only (see below).**

**For the species election, Applicant hereby elects a dose of bacteria of the genus *Dietzia*. Claims 1-15, 26-29, 31-37 are readable on the elected species. At least Claims 11 and 26 are generic.**

### **TRAVERSE OF LACK OF UNITY REQUIREMENT – GROUPS I-IV REQUIRE A COMMON SPECIAL TECHNICAL FEATURE**

The Office asserts Groups I-XI “are not so linked as to form a single general inventive concept under PCT Rule 13.1”. (Detailed Action dated June 18, 2009 (“Detailed Action”), ¶ 1). PCT Rule 13.1 states “[t]he international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (“requirement of unity of invention”)”. PCT Rule 13.2 states “the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features”. Special technical features are “those technical features that define a contribution which each

of the claimed inventions, considered as a whole, make over the prior art". PCT Rule 13.2.

The Office concludes Groups I-XI are not related to a single general inventive concept because those groups lack the same or corresponding special technical feature. Specifically, the Office states "[t]he special technical feature that is common to all of the groups is a bacterium of the genus *Dietzia* or some component thereof", "bacteria of the genus *Dietzia* were known in the art at the time of the invention, as taught by Rainey et al." and concludes with "there is not[sic] special technical feature that makes a contribution over the prior art". (Detailed Action, ¶ 2). Applicant respectfully traverses the Lack of Unity Requirement regarding the Office's conclusion and specifically, with respect to Groups I-IV.

As mentioned, the Office states "there is not[sic] special technical feature that makes a contribution over the prior art". If the Office meant to say "there is no special technical feature that makes a contribution over the prior art," Applicant believes the Office is incorrect. For example, in Claim 1 Applicant claims the specific composition deposited with the American Type Culture Collection as Accession number PTA-4125. Further, in ¶¶0036 of Applicant's written description PTA-4125 is defined as the specific species 79793-74 (discovered by Applicant) of genus *Dietzia*. Rainey et al. only discloses the genus *Dietzia*, not the species that Applicant claims. Discovered species of a prior art genus are generally known to be novel and a contribution over the prior art genus. Thus, at least Claim 1 has a "special technical feature" as defined by PCT Rule 13.2.

If the Office meant to say "there is no common special technical feature that makes a contribution over the prior art", Applicant respectfully submits the Office has erred. As discussed above, Applicant asserts that the composition deposited at ATCC Accession Number PTA-4125 is a special technical feature of Claim 1. This special technical feature is common to groups other than Group I. For example, the special technical feature of a

composition comprising ATCC Accession Number PTA-4125 is common to Groups I-IV. Because Groups I-IV have a technical relationship involving one or more of the same or corresponding special technical feature(s), the requirement of unity of invention of PCT Rule 13.1 is satisfied for at least Groups I-IV.

Applicant respectfully requests reconsideration and withdrawal of the Lack of Unity Requirement with respect to Groups I-IV.

The undersigned believes no fee is due for this filing, however the Commissioner is hereby authorized to charge any fee for this filing to Deposit Account No. 50-1660.

If not done so already, please recognize and/or change the correspondence address for this application to the address associated with **Customer Number 26365**.

### **CONCLUSION**

Applicant respectfully submits that the application is in condition for review.

Applicant's undersigned attorney may be reached by telephone at (715) 835-5232 or by facsimile at (715) 835-9890. All correspondence should be directed to the below listed address.

Respectfully Submitted,

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